

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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KEVIN W. TOBIN,  
Plaintiff

v.

Civil Action No. 05-11179DPW

LIBERTY LIFE ASSURANCE  
COMPANY OF BOSTON and  
LIBERTY MUTUAL  
INSURANCE COMPANY,  
Defendants

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**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
STRIKE JURY CLAIM**

The First Circuit has not yet definitively decided whether plaintiffs in ERISA actions are entitled to a jury trial. Gentile v. John Hancock Mutual Life Insurance Company, 951 F. Supp 284, 290 (D.Mass.1997).

Because actions to recover benefits due under the terms of a plan are legal in nature, some courts have permitted jury trials on ERISA claims. JOHN F. ADKINS AND NANCY S. SHILEPSKY, MASSACHUSETTS EMPLOYMENT LAW, § 19.6.7 (2003).

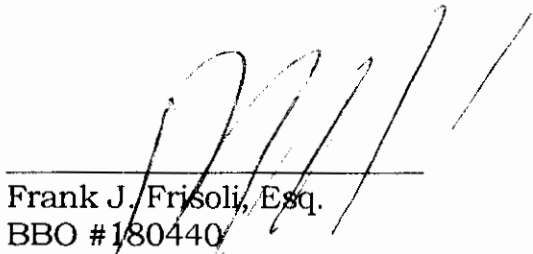
In addition, Tobin has asserted a breach of contract claim and to the degree that the breach of contract claim survives, Tobin should be entitled to a jury trial on that claim.

Finally, where there are issues of fact in dispute, e.g. the actual termination date of the plaintiff, the plaintiff should be provided a jury to adjudicate any factual disputes.

For the foregoing reasons, the motion of the defendants should be denied.

Respectfully submitted,  
KEVIN W. TOBIN  
By his attorney,

Dated: August 24, 2005

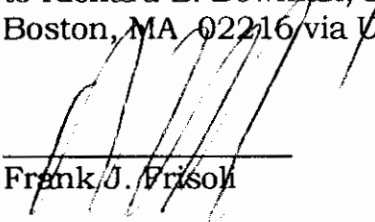


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CERTIFICATE OF SERVICE

I, Frank J. Frisoli, hereby certify that a true copy of the above document was served upon the attorney of record for the Defendants by mailing a true copy to Richard E. Bowman, Esq., Rose & Associates, 29 Commonwealth Avenue, Boston, MA 02216 via U.S. first class postage pre-paid mail this day.

  
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Frank J. Frisoli

Date: August 24, 2005